## The Polynesian:

PUBLISHED WEEKLY AT HONOLULU, Hawaiian Islands.

Abraham Fornander, . . . . Editor.

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CONTINUES his old business at the new store or Kaaliumanu street. Chr. nometers Rated by observations of the sun and stars with a transit in-trument accurately adjusted to the meridian of Honolulu. Particular attention given to fine watch repairing. Sextant and Quadrant glasses silvered and adjusted. Charts and Nautical instruments constantly on hand and for sale.

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Summer Bakers, tin and copper pumps bathing tubs, foot and shower baths, tin and zinc roofing, and a general assort-D' Ship work executed with neatness and dispatch. 5 tf

CHARLES W. VINCENT. CONTRACTOR AND BUILDER. THE UNDERSIGNED would inform his friends and the public, that he has removed his Carpenter Shop to the premises on Fort street, opposite the store of C. Brewer 2nd, and would solicit that patronnge heretofore so liberally

erally bestowed. All orders in the various branches of Building, Plans, Specifications and contracts attended to with promptness and dispatch.
OHARLES W VINCENT W. FISCHER, Cabinet Maker and French Polisher,

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Business Cards.

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The highest price paid for Island Produce. Money advanced for Bills of Exchange at reasonable DUDLEY C. BATES.

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Ships supplied with recruits and Money advanced on Bills of Exchange. HILO, Hawaii, July, 1860. ALLEN & BERRILL, SUCCESSORS TO

GEORGE W. MACY, Kawaihae, Hawaii. Will cominue the General Merchandise and Shipping business at the above port where they are prepared to fur-nish the justly celebrated Kawaihae Potatoes, and such recruits as are required by Whale Ships at the shortest notice and on the most reasonable terms. 9 if

# NOTICE



WM. HENRY TRESCOTT,

ACTING SECRETARY OF STATE TO THE UNITED STATES. To all whom these Presents shall come, Greeting : NOW YE. THAT GEORGE E. NETCHER, A citizen of the United States, has filed in this Department the required notice of the discovery of guano on Howland's Island, in the Pacific ocean, the same lying in North latitude 50 min., and in west longitude 176 deg. 52 min.

That notice of the occupation of said Island, in the name of the United States, by A. G. Benson, on behalf of himself and his associates, Wm. W. Taylor and the said George E. Netcher, has also been filed.

And that the United States Guano Company of New York, a

And that the United States Guano Company of New York, orporation of citizens under the laws of the State of New York assignee of the assigns of the parties aforesaid, has entered into sufficient bonds, under and according to the provisions of the Act of the Congress of the United States, passed on the eightonth day of August, in the year eighteen hundred and fifty-six Wherefore, the said United States Guano Company is entitled. in respect to the guano on the said island, to all the privileges and advantages intended by that act to be secured to citizens of the United States who may have discovered deposits of guano; provided, always, that the said United States Guano Company shall abide by the conditions and requirements imposed by the

Act of Congress aforesaid.
In witness whereof, I, William Henry Trescott, Acting Sec whereof, I, William Henry Trescott, Acting Sec-retary of State of the United States of America, have hereunto set my hand and caused the seal of the Department of State to be affixed at Wash-ington, this seventh day of August, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fifth.

WM. HENRY TRESCOTT.

Acting Secretary.
All persons not duly authorized are hereby forbid occupying or removing Guano from the above or any other Island, Rock or Key belonging to the Company, as published in the New York Tribune, March Sth, 1859. 6 tf (Signed)

TOBACCO!

United States Guano Company

ED. BURGESS' Coffee Saloon & Billiard Room! N. B. Those who use Tobacco and seldom get a good arti de, should not let slip this golden opportunity.

EX ORIENTAL! JUST RECEIVED!

And for sale by the Undersigned

CASES MALCOM TOBACCO, 10s, 1131bs each, Boxes "Mary & Jane,"
" "Moore"
" "Hydromel"

Piano Fortes. SHORTLY expected, per "Orie

from Boston-I fancy case Plano Forte, 6% oct., 1 half round " " 6% " From the manufactory of Messrs. Hallet & Cumston, whose instruments have an unequalled reputation for sweetness of tone, elegance and perfection of mechanical construction.

C. BREWER & CO., Agents.

Just Received! EX 'R.W.WOOD,' FROM FRAZER RIVER, 100 bbls. fine Red Salmon, 10 bbls. very sup. Salmon.

COILS MANILA ROPE, for sale by DUDLEY C. BATES.

HONOLULU, AUGUST 31, 1861.

CHAS. WOLCOTT BROOKS, W. FRANK LADD, EDWARD F. HALL, JR CHAS. W. BROOKS & Co.,

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Particular attention given to the purchase, shipment and sale of Merchandise, to forwarding and transhipment of goods, the chartering and sale of vessels, the supply-ing of whaleships, and the negotiation of Exchange. EXCHANGE ON HONOLULU in sums to suit. ADVANCES MADE ON CONSIGNMENTS.

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DARTICULAR attention given to the purchase, shipment and sale of merchandise; forwarding and tran-shipment of goods; the chartering and sale of vessels; the supplying of whaleships and the negotiation of exchange.

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NEVER DEBILITATES.

IT is compounded entirely from Gums, and him become an established fact, a standard sledicine, known and appeared by all that a recommended. It has clied thousands the half glen up an hopes inself-lederstheates in my vision of the leaves.

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cs, and may be used sucry I ami y MediIl EADACHE, (as
twenty minutes, if
spoonfuls are takstates.

A twho use it are | giving their testimony MIX WATER IN THE MOUTH WITH THE INVIGORATOR, AND SWALLOW

P. lee One Dottar per Bottle, ALSO, SANFORD'S

CATHARTIC PILLS, GLASS CASES, Air Tight, and will keep

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S T. W. SANFORD, M. D., Manufacturer and Proprietor Broadway, New York. Soin by the Druggists everywhere, and by

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CUSTOM HOUSE AGENT.

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All furnished on the

Shortest Notice! Monganui lies in the Southeast part of Lauristan or Doubtless Bay, and is in Lat. 35° 06' S., Lon. 178° 35' E. 36 tf

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A Type Foundry, and Dealers in all kinds of Printing Materials.

Printers will find it to their advantage to call on us beore purchasing. Foreign Advertisements.

BOGLE'S HYPERION FLUID: For Restoring, Preserving and Adorning

THE HAIR! THE GREAT PRESERVATIVE OF THE AGE NO HOME in the Tropics should be without Bo-

Prof. Anderson, in 1855, Pronounced it to be the Saver of his Hair ROYAL LYCEUM THEATER, STRAND, LONDON, 1

Saturday, Aug. 25th. .. 255. It affords me very great pleasure to bear witness to the surprising efficacy of "Bogle's Hyperion Fluid." I had occasion to resort to it after losing so much of my hair as to be almost bald, owing to the influence of the chimate, during my tour in the United States. Various much vaunted Hair Restoratives which I had already tried having entirely failed, I was advised to test the value of Mr. Bogle's preparation. I used it diligently for some time, when to my great gratification my hair assumed more than its former luxuriance. Hence I can—both from my own experience and that of my friends to whom I have recommended its use—most confidently advise the use of the "Hyperion Fluid" to all who need the use of that which shall restore, nourish, and beautify their hair. For these purposes, I am certain that it is unsurpassed and unsurpassable.

— JOHN HENRY ANDERSON,

"Great Wizard of the North,"

To the Public of Honolulu.

The Agent of Bogle's Hyperion Fluid having called on me when I arrived here, I was delighted to find my old friend had preceded me (I mean Begle's Fluid.) My hair was folling of in thousands per day; a short interview with my friend has stoped the fall; a few smart rubbing operations, performed by "VOELKER," has made every hair as tast as the Hawaiian on my Magic Chair. 1. in 1859, in Honolulu, recommend it the world as the Great Hair Preserver.

JOHN HENRY ANDERSON, "Wizard."

Agent for the sale of Bogles Fluid
VOELKER.
Perfumer, Fort street, Honolulu.

#### BEST HAIR DYE REGULAR DISPATCH LINE In the World!

THIS IS RATHER STRONG larguage, A yet Bogle's Electric Hair Dye (recently improved) was proven to be so by the judges at the late Mechanics' Fair, held n Boston (among whom was Dr. Hayes, the eminent chemis and State Assayer), who awarded it the Prize Medal and Diploma, over the choicest hair dyes on exhibition from all parts of the Union. Its unparalleled superiority consists in, 1-t, The ingredients are nourishing to the hair, not destructive, as others are. 2d, Does not burt or stain the skin. 3d, Is easily applied, and dyes the hair any color required from a delica e brown to a deep black, so natural as to appear mar-velleus. Manufactured, sold and applied by WM. RUGLE. velli-us. Manufacturen, soit and approved and of Druggists 202 Washington street, Boston, and may be had of Druggists 50 y



MRS WINSLOW,

SOOTHING SYRUP. FOR CHILDREN TEETHING,

which greatly facilitates the process of worthing, by soft-ning the guma, reducing all inflammation—will aliay ALL PAIN and spacematic action,

SURE TO REGULATE THE BOWELS. RELIEF AND HEALTH TO YOUR INFANTS. We have put up and sold this naticle for over ten years, and CAN SAY, IN CONFIDENCE AND TRUTH of it what we never have been SAT, IN CONTINENCE AND THE HIM IN AN A WE SEED THE STATE OF A SINGLE INSTANCE, TO EFFECT A CUITE, when timely used. Rever did we know an instance of disatisfaction by any one who need it. On the contrary, all are delighted with its operations, and speak

in terms of communication of its married effects and conduct virtues.

We speak in this marrier WHAT WE IND KNOW," after ten years' experience, AND PLEDGE OUR REPUTATION FOR THE FUL-FILLMENT OF WHAT WE HERE DECLARE. In almost every inbe found in fifteen or twenty minutes after the symp is administered. This reluable preparation is the prescription of one of he great EX-PERIENCED and SKILLFUL NURSES in New England, and has been used with NEVER FAILING SUCCESS in

THOUSANDS OF CASES.

It not only relieves the child from pain, but inexposed as the atomich and bowels, corrects acidity, and good loss and energy is the eliminary stem. It will almost instantly relieve GRIPING IN THE BOWELS, AND WIND COLIC, and evercome conversions, which, if set speedlif ramedied, and in death. We believe it the BEST AND SUREST RE MEDY IN THE WORLD, in all cases of DYSENTERY AND I TAR-RHEA IN CHILDREN, whether it arises from tections, or from other came. We would say to every mother who has a child effering from any of the foregoing complaints—LO NOT LET YOUR PRE-JUDICES, NOR THE PREJUDICES OF OTHERS, sland between you and your suffering child, and the relief that will be SURE-yes ABSOLUTELY SURE—to follow the use of this medicine, if timely used Full directions for using will accompany each bottle. None genuine unless the fac simils of CURTIS & PERKINS, New York is on the outside wrapper. Sold by Drozzinis throughout the world.

Principal Office, 13 Cedar Sar et, N. Y PARK & WHITE, SOLE AGENTS FOR THE PACIFIC COAST, 132 Washington Street, San Francisco, Cal.

#### NOTICE TO MASTERS & OWNERS OF WHALESHIPS



THE UNDERSIGNED beg leave to announce to Masters of Whaleships, and the public in general, that they have succeeded in the RAILWAY AND HEAVING DOWN PREMISES, including Storchouses, etc., etc., and are now prepared to execute repairs with despatch and the lower rates than at any other port in the Pacific.

22 1y\*

OWEN & GOODING, Shipwrights.

MESSRS. C. A. FLETCHER & CO. COMMISSION MERCHANTS

GENERAL AGENTS HARODADI, JAPAN,

BEG TO INFORM OWNERS AND MASTERS OF SHIPS about to visit the port of Hakodadi, that they are prepared to take Consignments and do business on the usual terms.

By arrangements with Home Insurance Offices, Messrs.
FLETCHER & CO. can take risks on Oil, or other shipments of

roduce hence. Hakodadi, Yesso, Japan, 4th July, 1859. PAINTER & CO.

Type, Presses, Printing Materials, Ink, Paper, Cards, &c., 510 Clay Street, above Sansome.

T. P. PAINTER | DE Offices fitted out with dispatch.

CHARLES F. ROBBINS, Importer and Dealer in Type, Presses, Printing Material

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CHARLES BREWER. COMMISSION MERCHANT, Boston, U. S. BY Refer to R. W. Wood and C. BREWER 20.

Piano for Sale. JUST RECEIVED PER BARK "YANKEE"

a magnificent seven octave piano in resewood case and iron
frame—made by James W. Vose, of Boston, in the newest style, with all the modern improvements. Apply to
MRS. IRWIN, Adams Street.

PRIVIES cleaned by night, neatly and expeditiously, cheap Leave orders with BROWN, at the Livery Stable opposite Sailor's Home, or with the driver of the Walkiki hay wag on.

The Polynesian.

SUPREME COURT--- In Equity.

L. KEELIIKOLANI VS. JAMES ROBINSON.

Messrs. Bates and Montgomery, for defendant, having filed a demurrer on the 28th of February last, to the Bill filed in this suit, the points were argued before the Chief Justice on the 2d and 4th of March following, and on the 6th of that month the Chief Justice delivered his decision as follows: This is a bill in Equity, in which it is alleged there was an agreement in writing, between Ka-

" Know all men by these presents that I, Kalaimoku, commonly called William Pitt, Esqr., do hereby assign unto James Robinson, his heirs, executors, administrators and assigns, one half of the wharf, commonly called the King's wharf, situated near the south-west angle of the Fort in Honolulu, extending in front one hundred yards or thereabouts, and running back one hundred vards or thereabouts, upon the following conditions: First-The said James Robinson doth hereby bind himself, his heirs, executors, administrators and

premises, and I, Kaiaimoku, do hereby agree to pay one half of all the expenses incurred in altering, repairing and improving the said wharf. And we do hereby bind ourselves, our heirs, executors, administrators and assigns, to fulfill the above agreement. Given under our respective hands and seals at Honolulu, this 11th day of January, in

the year of Our Lord 1827. " Signed KALAIMOKU. JAMES RCBINSON."

The plaintiff claims by the agreement to receive one half of the proceeds of the premises, arising from rents, wharfage, or use as a ship yard, after deducting one half of the expenses of altering, repairing, or improving said yard. That Kaiaimoku died in 1829, leaving W. P. Leleiohoku, his son, his heir, who died in 1848, leaving an infant son his heir, John Pitt Kinau, who died in 1859, being still a minor, and that the plaintiff was the mother of John Pitt Kinau and his lawful heir; and the complainant avers that no account has been rendered of the net receipts and profits of said wharf and premises, and that a large sum is now due; that the agreement is no longer in ferce as against her, and that the entire use of the property is her's. Wherefore, theplaintiff prays that the defendant may be required to account, and pay whatever amount may be due, and to surrender the use and occupation of the premises; and that such other things may be done in the premises as to truth and justice may appertain. The defendant demurs, first on the ground of

The Court, in the case of Ewing and Miller vs. Janion, (Haw. Rep. p. 66.) declares that on a bill of discovery in a matter of account filed in the Equity side of the Court, that the bill would be entertained notwithstanding the case was one cog-nizable at law; and the Equity Court having rightful jurisdiction for the purpose of discovery, would also give relief. The Court take the position that they will exercise in such cases a sound discretion in exercising jurisdiction. In the case of Carlisle vs. Wilson, (13 Vesey, 278, 279.) Chancellor Erskine says, " that it cannot be maintained that this Court will take jurisdiction, and grant relief only when no remedy can be had at law, the contrary is notorious." In this case as appears by the agreement, it is peculiarly a case for the Equity side of the Court, for the assignment to the defendant was made of one half the wharf on condition that he should pay to Kalaimoku one half of all the moneys received for the use of such wharf and premises. Who can render an account but himself? and this he has agreed to do, and the case comes fully witin the powers of a Court of Equity, and the presumption is strong that the adequate remedy could not be had in a Court of

It is further assigned as a cause of demurrer, that it is not alleged in the Bill that the defendant is or ever has been in possession of the premises. The plaintiff alleges an assignment of one half of the property, and that he agreed to account for the rents and profits, and that he has not done so, and therefore she calls upon him to account and to surrender the use and occupation of the premises; as upon a title derived from Kalaimoku. The although the possession is not alleged in express complainant seeks no discovery as to her title. She knows what title she has got, and she should fendant to answer distinctly and intelligently. he has not received rents he can so answer, if has not been in occupancy, he can disclaim. allegation is sufficient.

It is further assigned, as a cause of demurrer, that it is not alleged that the preliminary conditions of the agreement have been performed by the defendant or by those under whom she claims. This is a sound objection, if by the construction of the agreement, a condition precedent was imposed on the plaintiff. By the agreement it appears that each party agreed to pay one half of the expenses incurred in altering, repairing and improving said wharf-and the defendant agreed to pay one half of all the monies received for the use of such wharf and premises to the party with whom he made the agreement, his heirs, executors, administrators and assigns. It is clear from the agreement that the defendant was to have possession and charge of the property, as he was to receive and account for the rents and profits-it is equally clear that he might have called upon Kalaimoku to have contributed his portion of the expenses of repairs, but if he did not, and delayed till the receipts were sufficient to liquidate it, they would be applied for that purpose, and thereby discharge that part of the obligation. Of all this the answer can give information. The agreement does not set forth who shall repair the wharf, but it does declare that each shall pay one half the expenses. If either party omitted to pay his pro-portion to the other who had made the repairs, the receipts would be properly applied to their payment. But I do not regard it in a matter of account, as a condition precedent, but rather in offset, if rents have been received.

It is further assigned that the Bill does not allege any demand for an account of the alleged rents, profits or wharfage, or that this defendant give any opinion at present. Those points were, refused to furnish such account. It is very evident first, that Leleiohoku could not have inherited the that in law and equity a demand for an account premises in question from Kalaimoku, who is said under agreements of this nature should be made, to have died in the year 1829, because by the law and if denied in the answer must be proved. It is of this Kingdom, at that time, Kalaimoku himself equitable that the party should have an opportu- could not have had a title transmissible by inheritnity to account, and pay, without a suit, and if no time is specified when this shall be done, it is reasonable that he should have notice, before being founded upon either a Land Commission award, a subjected to the annoyance and expense of a suit. Royal Patent, or the Mahele book of 1848. Should It should be alleged in the Bill that a demand has the complainant amend her bill so as to conform to been made, and refused, and I regard this cause of the present ruling of the Court, the respondent demurrer as sound in law.

that the premises should have been described in the Court, in such way as counsel may think exthe Bill by metes and bounds The defendant re- pedient. ceived the assignment of the property, described as the King's wharf, situated near the south-west angle of the Fort in Honolulu, extending in front angle of the Fort in Honolulu, extending in front one hundred yards or thereabouts, and running back one hundred yards or theabout. It is supposed that the parties understood clearly and dissuppose you forget your father was a jackase!"

A negro boy was driving a mule, when the animal suddenly stopped and refused to budge. "Won't go, hey?" said the boy. "Feel grand, do you! I suppose you forget your father was a jackase!"

the title, for it is a general rule that a tenant shall not dispute his landlord's title. Reasons undoubtedly may be given in the answer for an accurate survey, and a failure of title may be shown, as a defense, in not taking the charge of property, but the agreement is not defective on its face, and all that either party can claim, as be-tween themselves, is that the agreement shall be carried out as written. Unless third parties have legally interfered to disturb the possession the defendant will be liable for one half the moneys received for the use of such wharf and premises. I do not regard it as a legal cause of demurrer, whatever force it may have by an answer, for there may be a state of facts which would vary the responsibility of the defendant, and render a survey of the premises actually occupied by him neceslaimoku and said defendant, in the following terms, sary; but this does not appear on the face of the

My opinion upon the whole is, that the demurrers are not well taken, and therefore must be overruled, with the exception of the fifth, and as this objection is well-founded, the demurrer must be allowed, unless the plaintiff moves to amend the Bill. It is true that the Bill is not carefully drawn, still its averments are clear and I think may be understood so that the defendant will have no difficulty in framing a definite and complete

C. C. Harris and R. G. Davis for complainant. A. B. Bates and J. Montgomery for defendant. tinctly the extent of the premises by the description, and they shall not dispute it, any more than

The complainant's counsel, C. C. Harris, amended his bill, but the counsel for the defendant took an appeal generally to the full Court on the remaining points of the demurrer, which was argued on the 22d March last, and on the 13th of August instant the Court delivered judgment on the demurrer as follows :

CHIEF JUSTICE ALLEN :- The Court have carefully considered the several causes of demurrer assigned by the respondent to the bill, and are of opinion that the hill upon principles of equity pleading is deficient in not alleging that the respondent enance of the contract, and occupied the same at the time of filing the bill, deriving profits therefrom, and that it is further deficient in not setting forth distinctly the derivative title of the complainant, by virtue whereof she claims to have inherited the premises described in the contract. The remaining causes of demurrer are overruled.

The demorrer therefore is sustained for the foregoing causes, with leave to the party to amend the bill. The Court will only remark that they rogard it as a settled principle of law that a party cannot controvert the title under which he holds an estate, and this principle applies also to the title of the heir, when the lessor dies during the term. There are exceptions to this general rule, as when the tenant was induced to accept possession from his lessee, say from a mistake, or when he has been deprived of possession derived from his lessor by one who has a paramount title, and some others. The question of heirship to the premises remains open. The Court are of opinion that the counsel have misapplied the general doctrine that a demurrer to a bill is sustainable when it is for possession of land, the remedy being, as they al-

lege, ejectment at common law. This assumes the ground that there is a title to settle, ! ut in this case the party is not permitted to question the title under which he holds by virtue of the contract. By the bill, the rights of the parties under the contract are in question, and not

a title adverse to the complainant. JUSTICE ROBERTSON :- On demurrer .- After careful examination and reflection, I concur in the opinion of the Chief Justice, that the demurrer must be sustained upon the two points indicated by him. I was at first inclined to give great weight to another point raised by the respondent, as to this being what is denominated in the books an ejectment bill, and therefore not sustainable. But upon reflection, I regard that objection as unsound. It does not appear from the face of the bill that

the title to the property is in dispute in this case. But complainant's bill is clearly defective upon the two points, which are sustained by our present ruling. The title set up by the complainant is a derivative title, and it is not set forth with sufficient clearness and fullness to compel an answer from the respondent. While it is true that neither the respondent, if he took possession of the premises under the grant, nor any one claiming under him, could be permitted to dispute the title of the original grantor, Kalaimoku, yet the respondent may well dispute the right of any other party, claiming an account of profits under the contract, She knows what title she has got, and she should have alleged it distinctly and fully, showing the derivation of her title from Kalaimoku, through W. P. Leleiohoku and John Pitt Kinau in succession, stating in each instance whether the party inherited by will, or otherwise, the premises described in the original deed. The complainant has not alleged in her bill that either of the parties through whom she claims to have derived her title inherited the particular property in question, out of which she seeks an account of profits, and the

Court cannot presume it. The other objection is, that the complainant does not allege that the respondent ever took possession of, or improved and derived profit from the premises, or that he was in possession at the time the hill was filed. Unless it is alleged, and admitted or proven, that the respondent took possession of the premises in pursuance of his contract with Kalaimoku, and that he used the premises, deriving profits from their use, the complainant cannot have a decree for an account of profits. And unless it is alleged, and admitted or proven, that respond-ent is now in possession of the premises, how can the complainant have a decree requiring the res-

pondent to surrender the possession to her?

It seems to me that if the Court should overrule the demorrer, and compel the respondent to answer the bill as it now stands, he might answer it in such a manner, keeping strictly within the rules of pleading, that had the cause gone to a hearing upon the bill and answer, the Court would have found it impossible to make a decree in favor of the complainant, by reason of the defectiveness of the pleadings, and would have been under the necessity of dismissing the bill.

There were two other points raised by counsel

for the respondent, in support of the demurrer, upon which the Court does not find it necessary to emurrer as sound in law.

As a further cause of demurrer, it is alleged er, to press those two points upon the attention of

August 13th, 1861.